The Miller Group, Inc.[1] ***and*** **Teamsters Union Local 115, affiliated with the International Brotherhood of Teamsters, AFL–CIO.** Case 4–CA–20129

April 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 12, 1992, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent and the General Counsel filed exceptions and supporting briefs and the Respondent filed an answering brief to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified and set forth in full below.[4]

[1] This designation reflects the Respondent's admission in its answer to the March 31, 1992 amendments to the complaint. The Respondent operates three divisions in Pennsylvania—the Miller Fabrics and H. L. Miller divisions are in the Independence plant in Schuylkill Haven, and the Pottsville Bleaching and Dyeing division is in Port Carbon.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, the Respondent asserts that some of the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the contentions are without merit.

[3] We agree with the judge that the evidence shows that the Respondent restricted Smith's use of the Blue Mountain breakroom and the maintenance department employees' use of this room for reasons proscribed by the Act. We also note that the restrictions imposed by the Respondent circumscribed the activity of a leading union adherent. Smith had testified on behalf of the Union at the representation hearing and was a member of the Union's in-plant organizing committee. The restrictions placed on Smith might be viewed by the other employees at the two plants as punishment of Smith because he had openly engaged in union activities. These employees might thereby be discouraged from extending further support to the Union. These circumstances provide another reason for finding that the Respondent's conduct with respect to Smith violated Sec. 8(a)(3) of the Act. See *Sands Motel*, 280 NLRB 132, 140 (1986).

In agreeing with his colleagues' adoption of the judge's finding that the Respondent's directing employee Smith to cease using the knitting department breakroom violated Sec. 8(a)(3) of the Act, Member Devaney finds it unnecessary to rely on the additional rationale stated above.

[4] We correct the judge's inadvertent errors in (1) failing to include the requirement that the Respondent affirmatively rescind its rule prohibiting plant maintenance employees full access to the Blue Mountain breakroom during authorized breaks; and (2) designating the incorrect name for the Union Local in his Order and notice.

We find merit in the General Counsel's exception to the judge's failure to require that the Respondent post notices at both its Schuylkill Haven and Port Carbon facilities. As noted by the judge, this Respondent has a recidivist history of engaging in unfair labor practices. See cases cited as *Pottsville Bleaching Co*., 275 NLRB 1236 (1985), 277 NLRB 988 (1985), 283 NLRB 359 (1987), 301 NLRB 1095 (1991), and 303 NLRB 186 (1991). These cases persuade us that the Respondent has engaged in ''a clear pattern or practice of unlawful conduct.'' *John J. Hudson, Inc*., 275 NLRB 874 fn. 2 (1985). Moreover, the plants are owned and controlled by the same individuals who set labor relations policies at both locations. That day-to-day labor relations operate at the plant level, as the Respondent contends, is therefore not controlling. We also note that subsequent to the events at issue here, the Regional Director, in a related representation case, found appropriate a two plant unit, Schuylkill Haven and Port Carbon, as sought by the Union. In these circumstances, we find notice posting at both locations essential to effectuate the purposes of the Act.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

ORDER

The National Labor Relations Board orders that the Respondent, The Miller Group, Inc., Schuylkill Haven, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Instituting or implementing any rule or regulation that prohibits plant maintenance department employees full access to the Blue Mountain breakroom during authorized breaks.

(b) Discouraging membership in or activities on behalf of Teamsters Union Local 115, affiliated with the International Brotherhood of Teamsters, AFL–CIO, or any other labor organization, by preventing or prohibiting plant maintenance employees full access to the Blue Mountain breakroom during authorized breaks.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative actions designed to effectuate the policies of the Act.

(a) Rescind any rule or regulation which prohibits plant maintenance department employees full access to the Blue Mountain breakroom during authorized breaks.

(b) Post at the Respondent's Schuylkill Haven and Port Carbon, Pennsylvania places of business copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

spondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT institute or implement any rule or regulation which prohibits plant maintenance department employees full access to the Blue Mountain breakroom during authorized breaks.

WE WILL NOT discourage membership in or activities on behalf of Teamsters Union Local 115, affiliated with the International Brotherhood of Teamsters, AFL–CIO, or any other labor organization, by preventing or prohibiting plant maintenance employees full access to the Blue Mountain breakroom during authorized breaks.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind any rule or regulation which prohibits plant maintenance department employees full access to the Blue Mountain breakroom during authorized breaks.

THE MILLER GROUP, INC.

Timothy J. Brown, Esq. and *Linda R. Carlozzi, Esq.*, for the General Counsel.

Barry R. Elson, Esq., of Philadelphia, Pennsylvania, for the Respondent.

Norton H. Brainard III, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

A. *Statement of the Case*

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing on April 23, 1992, before me at Pottsville, Pennsylvania, upon an unfair labor practice complaint[1] issued by the Regional Director of the Board's Region 4, which alleges that Respondent Miller Fabrics, a division of The Miller Group, Inc.,[2] violated Section 8(a)(1) and (3) of the Act. More particularly, the complaint alleges that the Respondent forbade union supporter Ronald Smith from taking his lunch and other breaks in a section of the Respondent's Schuylkill Haven, Pennsylvania plant known as the Blue Mountain breakroom, that it did so for discriminatory reasons, and that it promulgated a general rule for discriminatory purposes forbidding maintenance employees from taking lunch and other breaks in that area Respondent admits that it took the actions in question but avers that it did so because of crowding in the breakroom, not for antiunion reasons. On these contentions the issues were joined.

B. *The Unfair Labor Practices Alleged*

The Regional Director for the Board's Region 4 found in an earlier representation case that The Miller Group, Inc., is a Pennsylvania corporation which maintains its offices at Schuylkill Haven, Pennsylvania, where its Miller Fabrics division, the division directly involved in this case, maintains a dyeing, knitting, and finishing operation. The Respondent's Pottsville Bleaching and Dyeing Company division is located in another plant about 7 miles away in the town of Port Carbon. A third division is also found at Schuylkill Haven, a plant which is sometimes referred to as the Independence or ''Indy'' plant. The Miller Group, Inc., is owned by John Miller. Both Miller Fabrics and Pottsville divisions have the same president, Wesley Edwards, and the same vice president of human resources, Richard Hemphill. In his decision issued on March 10, 1992, the Regional Director concluded that the Pottsville and Miller Fabrics divisions were a single bargaining unit and directed that an election be conducted in that unit. (Case 4–RC–17641.) Involved in that decision was

[1] The principal docket entries in this case are as follows:

Charge filed by Teamsters Union Local 115, affiliated with the International Brotherhood of Teamsters, AFL–CIO (Union) against the Respondent on October 7, 1991, amended on December 16, 1991, and amended again on March 25, 1992; complaint issued against the Respondent by the Regional Director, Region 4, on December 24, 1991, amended on March 31, 1992, and corrected on April 2, 1992; Respondent's answer filed on January 8, 1992; hearing held in Pottsville, Pennslyvania, on April 23, 1992; briefs filed with me by the General Counsel and the Respondent on or before June 18, 1992.

[2] Respondent admits, and I find, that it is a division of The Miller Group, Inc., a Pennsylvania corporation, which has an office and place of business in Schuylkill Haven, Pennsylvania, where it is engaged in the production of fabrics. During the preceding year the Respondent, in the course and conduct of its business, sold and shipped from its Schuylkill Haven, Pennsylvania plant directly to points and places outside the Commonwealth of Pennsylvania goods and materials valued in excess of $50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

a finding that some 70 knitters and related employees, employed in the Miller Fabrics division and known informally as Blue Mountain employees, were a part of this unit.[3] I incorporate all of those findings in this decision.

Near the knitting department—the Blue Mountain work area—is the maintenance department. It is housed in a separate building across a driveway from the building where the Blue Mountain work area is located. The maintenance department is located about 50 yards from the knitting room and its breakroom. Both areas are at one end of a large building, some 500 yards long and 50–75 yards wide, where several hundred other employees also work.

The Independence plant operates 24 hours a day, 7 days a week. All of the employees involved in this dispute work 3 consecutive 12-hour shifts, either during the day or during the evening, as well as every other Sunday. Maintenance employees follow the same work pattern as do production employees. The total complement of each group is divided into four shifts to accommodate this scheduling.

There are three breakrooms in this large industrial building. In the middle of the building, near the dye room, is the main lunchroom. The location at issue in this case is immediately adjacent to the knitting room. The record also contains a reference to a small breakroom located in the building where the maintenance department has its office and shop. All of these breakrooms have chairs, tables, refrigerators, and microwave machines. The main lunchroom and the Blue Mountain or knitting department breakroom also have an assortment of vending machines for the use of employees.

The Blue Mountain breakroom was built in 1987 when the knitting function was moved to the Independence plant. It is normally frequented by knitters, knitting machine maintenance personnel (as distinguished from plant maintenance men), and employees in the greige warehouse adjacent to the knitting room. Some employees in this department opt to take their breaks in other parts of the plant, or outside the building where they can smoke, since a no-smoking rule is observed in both of the breakrooms in the plant building. A majority on each shift take their three daily breaks at the same time, although knitters, who are paid on a piece-work basis, sometimes work through their breaks and do not take advantage of the authorized time off. Plant Maintenance employees, such as Ronald Smith, work throughout the plant, wherever a need for their services arises, and sometimes take their breaks where they are performing work rather than in any designated breakroom.

In April 1991, the Union began to organize both the Independence and Port Carbon plants. A representation petition was filed on June 5, 1991. A hearing was held on several days in July 1991, during which Ronald Smith testified on two occasions on behalf of the Union. Smith is an electrician on the ''A'' shift and is employed in the plant maintenance department. The Respondent admits that it was well aware of the fact that Smith was a prounion activist.[4] As noted above, the inclusion of the knitting department in the bargaining unit was one of the matters at issue at that hearing. The events which took place in this case occurred while the representation case was pending before the Regional Director awaiting a decision.

Sometime in mid-September 1991 Martin Horne, knitting plant manager, saw Smith eating with others during breaktime in the Blue Mountain breakroom. A week or two later, he called Gary O'Hara, the director of human resources for the Respondent, and asked O'Hara whether it was his understanding that the Blue Mountain breakroom was reserved exclusively for knitting department personnel. O'Hara confirmed Horne's understanding, whereupon Horne phoned Carl Brown, the maintenance supervisor on the ''A'' shift, and instructed Brown to instruct Smith not to take his breaks any longer in the Blue Mountain breakroom. During the morning of September 25, while Smith was performing maintenance work near the dye tubs in the dye house, Brown, along with maintenance man Ed White, approached Smith and told him that he was no longer permitted to take his breaks in the Blue Mountain breakroom. At that time, Brown gave Smith no reason for the instruction. Smith asked for a reason and Brown simply told him that he was issuing the instruction because he was told to do so. I credit Smith's testimony that, a few minutes later, Horne passed the area where Smith was working and Smith asked him ''What's this about not eating in the Blue Mountain break room?'' Horne replied, ''Ron, you never ate there before. We all know why you are eating there now, and it's for one reason and one reason only.''

Later on in the day, Smith was paged by Brown over the loudspeaker and told to report to the maintenance shop. When he arrived, Brown and Edward Shamanski, the corporate director of maintenance, were present. Shamanski repeated the earlier directive, adding that the Blue Mountain breakroom was too small to accommodate both Smith and the others who ate there. Shamanski told Smith that, since he was an electrician, the Company wanted him to eat in the maintenance department break area so his supervisors would know where he was in the event of an emergency. Shamanski added, ''How would you like it if the rest of the plant ate at your break table?'' He then asked Smith if the latter had any questions. Smith said no.

At noon Smith took his lunchbreak in the maintenance department breakroom. Two or three other maintenance men joined him. At that time Brown told all of them that the Company did not want any of them to eat in the Blue Mountain breakroom because it was too small to accommodate them. Later on, during the evening shift, the same instruction was given by Brown to evening shift maintenance employees. I credit the testimony of evening shift maintenance man Edward Ginther that Brown told these individuals, ''We don't want you over there. You don't belong there. You may buy food there but you must eat in the maintenance shop only.'' As he was leaving the area, Brown made another statement to Ginther personally in which he stated, in substance, that ''you understand what is going on and why we don't want you eating in there. They don't want you talking to the people in Blue Mountain about what is going on with the union situation.'' Brown's instruction was later clarified so that maintenance department employees were informed that they could eat elsewhere in the plant, other than in the

[3] The name Blue Mountain is derived from the fact that, in 1987, the Respondent moved knitters, knitting mechanics, and greige warehousemen from Blue Mountain Fabrics in Orwigsburg, Pennsylvania, to the Independence plant.

[4] At the outset of the campaign, Union-Secretary Treasurer John P. Morris wrote a letter to the Respondent's president, Wesley R. Edwards, informing him that Smith and eight other named employees were members of the Union's in-plant organizing committee.

maintenance department breakroom, so long as they did not use the Blue Mountain breakroom for anything but the purchase of items from the vending machines. Since that time, maintenance department personnel have continued to make purchases from time to time from the Blue Mountain breakroom vending machines but they have not taken their breaks at that location.

C. *Analysis and Conclusions*

This is not the first case in which this Company has been brought before the Board to respond to an unfair labor practice allegation. In 1985 in *Pottsville Bleaching & Dyeing Co*., 275 NLRB 1236, the Board found the Respondent guilty of unlawfully discharging Joseph Sullivan, a union supporter with 19 years of service, who had been the union observer in a representation election. In 1985, the same company was found guilty of unfair labor practices by making several intimidating statements to its employees concerning union matters. In 1987, the Respondent was found guilty of unlawfully discharging Ronald Downey, who had been a union steward, a union observer at an election, and a witness in two previous unfair labor practice proceedings. 283 NLRB 359 (1987). In 1991, the Respondent herein was found guilty of making unlawful interrogations and threats concerning union activities and guilty of engaging in objectionable conduct which affected the results of a representation election. 303 NLRB 186 (1991). These cases all arose at the Port Carbon plant, some 7 miles from the site of the present incidents.

Both plants are part of the same bargaining unit and are geographically quite close. They are owned and controlled by the same individuals who set labor relations policies at both locations. In light of these facts, the events which took place in this case at the Independence plant should be evaluated against the background of antiunion hostility and illegal conduct in which this Respondent has repeatedly engaged.

A great deal of testimony was devoted to the question of whether, before September 25, 1991, plant maintenance men took their breaks in the Blue Mountain breakroom. I credit Smith's uncontradicted testimony that he had done so on several occasions and I credit Ginther's uncontradicted testimony that he had done likewise. Even though the practice might not have been widespread, it is certain that, before the incidents occurred which gave rise to this case, there was no written or oral restriction or prohibition against maintenance men taking their breaks at this location. At present, there is no written or oral restriction or prohibition on anyone else doing so either, although most employees prefer to frequent a larger lunchroom in the middle of the plant building because it is closer to their workstations.

The reason asserted by Horne in directing Smith to refrain from using the Blue Mountain breakroom was that his presence in the area caused overcrowding. Even though several employees testified for the Respondent as to the size of the room and the extent of the facilities available there, it is also clear that no employee ever complained about the crowding of the breakroom to any member of management. It is also clear that the asserted reason or reasons for the change in the Respondent's policy did not arise until the representation petition, filed by the Union, was being litigated before the Regional Office. At issue in that case was whether or not knitting department employees would be allowed to vote in the forthcoming election. Leading the union effort before the Board was Ronald Smith, a plant maintenance man who testified twice at the representation case hearing. It was his presence in the breakroom, discussing assertedly ''unknown topics'' with knitting department employees in an animated fashion, that prompted Horne to act.

Initially, the instruction to refrain from using the breakroom for breaks was given specifically to Smith and to no one else. When Smith asked Horne for an explanation, he was told, in essence, that it was for ''one reason and one reason only.'' It is small inference to draw that Horne was referring to Smith's union activism. By restricting Smith from using the Blue Mountain breakroom, with, of course the exception that he might enter the premises to buy items from the vending machines, and by doing so in order to prevent Smith from talking union with knitting department employees who gathered there, the Respondent discriminated against Smith in the tenure of his employment for prohibited reasons and thereby violated Section 8(a)(1) and (3) of the Act.

In order to provide a cover story for its action in keeping Smith out of the breakroom, the Respondent broadened this prohibition into an oral rule applicable to all maintenance department employees. At their own lunchbreaks, Maintenance Supervisor Brown told both day-shift and night-shift supervisors that they could no longer use the breakroom, with the one stated exception. Various additional excuses were proffered on this occasion—the room as too small, maintenance men were needed in emergencies, and the Respondent wanted them to spend their leisure moments in the maintenance department's own breakroom so they would be available. This makeweight argument ignored the fact that the plant is equipped with a loudspeaker system which permits maintenance personnel or anyone else to be summoned immediately from any part of the plant, including the Blue Mountain breakroom. It also ignores Smith's credited testimony that, in 5 years of employment at the plant, he has never been summoned to respond to an emergency. Brown told Ginther that the reason for the new rule was to put the damper on union activities. This explanation is the credible one. Accordingly, by instituting a rule preventing maintenance men from taking their breaks in the Blue Mountain breakroom in order to prevent them from engaging in union activities, the Respondent herein violated Section 8(a)(1) of the Act. *General Motors Corp*., 254 NLRB 1129 (1981); *Libby-Owens Ford Co*., 285 NLRB 673 (1987).

CONCLUSIONS OF LAW

1. Respondent Miller Fabrics, a division of The Miller Group, Inc., is now and at all times material herein has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Union Local 115, affiliated with the International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By specifically directing an employee to cease using a company breakroom in order to discourage his union activities, the Respondent herein violated Section 8(a)(3) of the Act.

4. By the acts and conduct set forth above in Conclusion of Law 3; and by instituting a general rule forbidding a certain group of employees from using a company breakroom in order to interfere with their union activities, the Respondent herein violated Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Since this Respondent has, in previous cases as well as in this case, demonstrated an ongoing disposition to violate the rights of its employees, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The recommended Order will also require the Respondent to post the usual notice, informing employees of their rights and of the results in this case.

[Recommended Order omitted from publication.]